

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5328 of 2017

M.Kamila Banu Mohamed

.. Petitioner

Vs.

1. The District Collector, Salem.

2. The Tahsildar, Salem.

3. The Taluk Surveyor, Salem.

4. The Village Administrative Officer,
Nazhikalpatti Village,
Salem District.

5. The Inspector of Police,
Mallur Police Station,
Salem District.

6. V.Rajasekar

7. K.Ramesh

(Respondents 6 and 7 are impleaded as per
order dated 24.01.2018 in W.M.P.No.1484 of 2018
in W.P.No.5328 of 2017)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 to 4 to remove the encroachments made in S.No.40/3 viz the Muslim Burial Ground and also in public road which is situated at Survey No.40/4G viz Pillayar Koil Street, Nazhikkalpatti Village, Salem Taluk and District with the help of the fifth respondent by considering the petitioner's representation dated 03.11.2016 enable the public to reach the burial ground through the said public road.

For petitioner : Mr.R.Ezhilarasan

For respondents: Mr.A.N.Thambidurai, Spl.G.P. for RR-1 to 5

Mr.S.Suresh Kumar for Mr.N.Manokaran for RR-6 & 7

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents 1 to 4 to remove the encroachments made in S.No.40/3, viz, the Muslim Burial Ground and also in public road which is situated at Survey No.40/4G, viz, Pillayar Koil Street, Nazhikkalpatti Village, Salem Taluk and District with the help of the fifth respondent by considering the petitioner's representation dated 03.11.2016 to enable the public to reach the burial ground through the said public road.

2. The case of the petitioner is that the land in subject matter of the Writ Petition, is a public place/road, which cannot be encroached by anyone much less the contesting respondents herein. After several rounds of litigation, the encroachments have been removed and after the orders of this Court, once again, the contesting respondents have encroached upon the land in question. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the official respondents submitted that even though patta has been issued, as per the records, it is only a public pathway and in view of the interim order passed by this Court, which has been finally confirmed by the learned single Judge and that the civil suit in O.S.No.323 of 2015 on the file of the Principal District Munsif Court, Salem, is pending, and since the hands of the official respondents are tied, they did not proceed further in the matter. The contesting respondents submitted that they were impleaded in the present Writ Petition and that the encroachment had already been removed and thereafter, at their request, the place was measured and identified by the Electricity Board and thereafter, the Electricity connection had been effected and the poles that have been erected, had been removed.

3. Admittedly, the contesting respondents are unable to place before this Court as to when the survey was conducted and thereafter, the electric poles have been removed. As admittedly, a civil suit is pending and that the encroachment has been removed as admitted by the contesting respondents, and that the civil suit in O.S.No.323 of 2015 stated supra, is pending, which has been directed to be disposed of by this Court by order dated 03.09.2015 in W.P.Nos.16106 to 16108 of 2015, without delving into the merits of the matter, we are of the view that the following observations be made/directions be issued:

(i) In terms of the communication of the Tahsildar, Salem, dated 25.05.2015, a patta has been issued in the land that is meant for "Vandi Pathai".

(ii) The encroachments that have been made in the public pathway, namely "Vandi Pathai", had been removed and that has

been admitted by the contesting respondents.

(iii) Admittedly, the writ petitioner has not been made as a party to the said civil suit and that as she is the complainant who has brought to the knowledge of the authorities about the encroachment, she is a necessary and proper party to be heard by the civil Court and that the plaintiffs will have to make necessary application to implead the writ petitioner herein as a party to the suit.

(iv) Till the civil suit is decided by appropriate forum, the place for which patta has been issued and which is mentioned as "Vandi Pathai", shall not be occupied by the contesting respondents.

(v) Depending upon the judgment and decree of the civil Court, it is open for the contesting respondents to utilise the disputed place in question, if the plaintiffs succeed in the suit.

(vi) If there is any fencing in the property in question, the same shall be removed for others to utilise the place, but this will not give a right to any of the defendants or public including the writ petitioner herein, to claim at a later point of time that since they are using the place, they are entitled to have the pathway.

4. With the above observations/directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

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To

1.The District Collector,
Salem.

2.The Tahsildar,
Salem.

3.The Taluk Surveyor,
Salem.

4. The Village Administrative Officer,
Nazhikalpatti Village,
Salem District.

5. The Inspector of Police,
Mallur Police Station,
Salem District.

+1cc to Mr.R.Ezhilarasan, Advocate SR.No.10870
+1cc to Mr.N.Manokaran, Advocate SR.No.11075
+1cc to Government Pleader SR.No.11180

W.P.No.5328 of 2017

RK(CO)
GN(27/02/2018)



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